UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

July 13, 2010

Paul A. DiMarco
President and General Manager
PHARMCO-AAPER
58 Vale Road
Brookfield, CT 06804

Re: (a) Notice of Violation, Administrative Order, and Reporting Requirement Pursuant to the Clean Air Act, Docket No. AAA-10-0020
(b) Question Regarding Compliance with EPCRA Section 313

Dear Mr. Marco:

Enclosed please find a Notice of Violation, Administrative Order and Reporting Requirement ("NOV, AO, RR") that the Environmental Protection Agency, Region 1 ("EPA") has issued to PHARMCO-AAPER ("Pharmco") pursuant to Clean Air Act Section 112(r) for a violation of the Act's risk management planning regulations. Specifically, EPA has found that Pharmco failed to submit a Risk Management Plan ("RMP") for its management of pentane, in violation of 40 C.F.R. §§ 68.10(a), 68.12(a) and 68.150. This letter also contains some questions about Pharmco's compliance with the Emergency Planning and Community-Right-to-Know Act's Toxic Release Inventory ("TRI") requirements.

The NOV, AO, and RR notifies Pharmco of the RMP violation, requires Pharmco to certify compliance with the RMP regulations, and asks some follow-up questions regarding compliance with the Clean Air Act. EPA's understanding is that Pharmco currently plans to restrict the amount of RMP-regulated chemicals on site so as not to trigger the regulatory thresholds. Should Pharmco ever decide to exceed the RMP threshold for any regulated chemical, Pharmco must have a RMP program in place *before* exceeding the threshold. In addition, Pharmco should be aware that the "General Duty Clause" of the Clean Air Act applies to Pharmco's management of pentane and other extremely hazardous chemicals regardless of whether the RMP thresholds are triggered. Pursuant to the General Duty Clause, found at Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (1) identify hazards which may result from accidental releases of such substances,

using appropriate hazard assessment techniques; (2) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur. Note that, unlike the RMP regulations, the General Duty Clause is *not limited* to the chemicals listed in 40 C.F.R. § 68.130. Also, the General Duty Clause applies regardless of the amount of chemical stored. A guidance that further explains the General Duty Clause may be found at www.epa.gov/emergencies/docs/chem/gdcregionalguidance.pdf.

The issuance of the NOV, AO, RR does not preclude EPA from electing to pursue further enforcement pursuant to the Clean Air Act, the Emergency Planning and Community-Right-to-Know Act ("EPCRA"), or any other federal statute that may apply.

EPCRA Questions

On November 18, 2008, Pharmco self-disclosed potential EPCRA violations after EPA's inspection, which resulted in EPA's denial of Pharmco's request for penalty relief under EPA's Policy on Compliance Incentives for Small Businesses. EPA has the following questions to further ascertain compliance with the TRI requirements of EPCRA Section 313, 42 U.S.C. § 11023. Please provide your response within 30 days to the staff listed in paragraph 23 of the NOV, AO, RR.

1. For each of the toxic chemicals tabulated below, please provide the amount manufactured, processed, or otherwise used for each calendar year 2006 through 2009. There may be additional TRI chemicals that must be reported as well. Please provide the following information for all TRI chemicals:

   a. the total amount released of each TRI chemical reported for years 2006, 2007 and 2008;
   b. the total amount of waste managed (including disposal, recycling, energy recovery, treatment, emissions, and releases) of each TRI chemical reported for years 2006, 2007 and 2008; and
   c. records substantiating the determination for Form A eligibility for years 2006, 2007 and 2008 for each TRI chemical reported. These records must include sufficient documentation and information to support the determination as well as the calculations made by the facility that confirm its eligibility for each chemical for which the Form A alternative threshold was applied.

TRI Chemical	**CAS Number**
Acetonitrile	75-05-8
Chloroform	67-66-3
Dichloromethane	75-09-2
Ethylene Glycol	107-21-1
Methanol	67-56-1

Methyl isobutyl Ketone	108-10-1
Methyl tert Butyl Ether	1634-04-4
N Butyl Alcohol	71-36-3
N-Hexane	110-54-3
Nitric Acid	7697-37-2
tert Butyl Alcohol	75-65-0
Toluene	108-88-3
Trichloroethylene	79-01-6
Xylene (mixed isomers)	1330-20-7
N,N-Dimethylformamide	68-12-2
N-Methyl-2-Pyrrolidone	872-50-4

2. Please explain why reports for several chemicals reported in 2005, 2006 and 2007 were resubmitted on April 28, 2009. For example, Pharmco submitted a 2006 Form A to EPA for chloroform and then submitted the same 2006 Form A again on April 30, 2009. See the attached chart summarizing Pharmco's submission of TRI reports. Please explain why this was done, and provide any supporting documentation.

Note that TRI requires reporting of all EPCRA Section 313 chemicals equal to or greater than the established threshold amounts. For most EPCRA Section 313 chemicals, the minimum reporting threshold is 10,000 pounds for those chemicals "otherwise used" and 25,000 pounds for those chemicals "manufactured" or "processed." For designated Persistent Bioacumulative Toxic chemicals ("PBT's"), including lead and mercury compounds, the reporting threshold is 100 pounds or less depending on the chemical. Additional information may be found on the web at: http://www.epa.gov/TRI/ .

Thank you for your cooperation in responding to all of EPA's questions and information requests to date. We apologize for the delay between our original inspection and this follow-up action, but my staff needed to prioritize some other matters.

If you have questions about this letter or the NOV, AO, and RR, please call Len Wallace at (617) 918-1835 or have your counsel call Catherine Smith, Esq. at (617) 918-1777. If you have questions about the EPCRA Section 313 information request, please call Chris Rascher at (617) 918-1834. Pharmco may request an opportunity to confer

with EPA within five days of issuance of the NOV, AO, and RR by contacting Len Wallace or Catherine Smith at the telephone numbers listed above.

Sincerely,

Susan Studlien

Susan Studlien
Director, Office of Environmental Stewardship
EPA Region 1 – New England

cc: Catherine Smith, EPA
Len Wallace, EPA
Barry Wortzman, Executive Vice President, GreenField Ethanol Inc.
Mark DeCaprio, Acting SERC Administrator, CT DEP

Enclosures:
(1) Summary of Pharmco's TRI Reporting
(2) NOV, AO, RR
(3) Small Business Resources sheet

Summary of Pharmco's TRI Reporting

Submitted	6/28/2007	6/18/2008	4/28/2009	4/30/2009	4/30/2009
Reporting Year	RY2006	RY2007	RY2008	RY2007	RY2006
Acetonitrile	Form A	Form A	----------	----------	----------
Chloroform	Form A	Form A	----------	Form A	Form A
Dichloromethane	Form A	Form A	Form A	----------	----------
Ethylene Glycol	Form A	----------	----------	----------	Form A
Methanol	Form A	Form A	Form A	----------	----------
methyl Iso Butyl ketone	Form A	----------	Form A	Form A	----------
Methyl tert Butyl Ether	Form A	Form A	----------	Form A	Form A
N-Butyl Alcohol	Form A	----------	Form A	--	----------
N,N Dimethyl Formamide	----------	Form A		Form A	----------
N-Hexane	Form A	----------	Form A	Form A	----------
Nitric Acid	Form A	----------	Form A	Form A	----------
N-Methyl 2-Pyrrolidone	----------	----------	----------	Form A	Form A
tert-Butyl Alcohol	Form A	----------	----------	----------	Form A
Toluene	Form A	Form A	Form A	----------	----------
Trichloroethylene	Form A	----------	----------	----------	Form A
Xylene (mixed isomers)	Form A	Form A	Form A	----------	----------

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 -NEW ENGLAND

IN THE MATTER OF	Docket No. AAA-10-0020
Pharmco Products, Inc., d/b/a PHARMCO-AAPER 58 Vale Road Brookfield, CT 06804	**NOTICE OF VIOLATION, ADMINISTRATIVE ORDER, AND REPORTING REQUIREMENT**
Proceeding under Sections 113 and 114 of the Clean Air Act	

INTRODUCTION

1. The United States Environmental Protection Agency Region I ("EPA") issues this Notice of Violation, Administrative Order, and Reporting Requirement ("NOV," "AO," and "RR") to Pharmco Products, Inc., doing business as PHARMCO-AAPER ("Pharmco" or "Respondent"), for failure to develop and submit a Risk Management Plan ("RMP") for the storage of pentane, in violation of Section 112(r) of the Clean Air Act ("CAA"or the "Act"), 42 U.S.C. § 7412(r), and implementing regulations set forth at 40 C.F.R. Part 68.

2. The NOV and AO are issued under the authority of Section 113 of the CAA, 42 U.S.C. § 7413. The RR is issued under the authority of Section 114 of the CAA, 42 U.S.C. § 7414. Section 113(a)(3) of the Act provides that EPA may issue an order requiring compliance with the requirements or prohibitions of Subchapter I of the Act (which, among other things, includes the requirements of Section 112(r)). Section 114(a)(1) of the CAA gives EPA the authority to

require a company to submit such information as EPA may reasonably require to determine its compliance with the CAA.

STATUTORY AND REGULATORY AUTHORITY

3. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as "the General Duty Clause."

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), also authorizes EPA to promulgate regulations and programs to prevent, and minimize the consequences of, the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated

substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan ("RMP").

5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. §§ 68.1-68.220 ("Part 68").

6. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities.

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

8. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three risk management programs. Program 3 is the most comprehensive, and Program 1 is the least comprehensive. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in specified NAICS codes or subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any

person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

10. Section 113(a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(3), authorizes EPA to issue compliance orders for violations of the Act, including violations of Section 112(r), 42 U.S.C. § 7412(r). A copy of the order must be sent to the relevant State air pollution control agency. An order relating to a violation of CAA Section 112 can take effect immediately upon issuance.

GENERAL ALLEGATIONS

11. Pharmco operates a facility located at 68 Vale Road in Brookfield, Connecticut ("the Facility"), where Pharmco manufactures commercial alcohols; sells and repackages alcohols and other solvents; and warehouses chemicals for sale and distribution.

12. Pharmco is a corporation organized under the laws of the State of Connecticut. As a corporation, Pharmco is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 302(e), to whom a compliance order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

13. The Facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

14. On May 22, 2008, EPA conducted an Emergency Planning Community Right-to-Know Act ("EPCRA") inspection at the Facility. An EPCRA chemical inventory form ("Tier II form") for year 2007 revealed that Pharmco stored pentane at the Facility, among other chemicals. The form indicated that the amount of pentane stored in the Facility's warehouse may have exceeded RMP thresholds. Accordingly, EPA conducted another inspection on November 12, 2008. EPA observed the following chemicals, among others, present in the warehouse of the Facility:

ethanol, dichlormethane, perchloroethylene, chloroform, tetrahydrofuran, trichloroethylene, pentane, and ethyl ether. After the November 12, 2008 inspection, EPA obtained from Pharmco various inventory records.

15. Pentane is a RMP chemical listed at 40 C.F.R. § 68.130. It has a threshold quantity of 10,000 pounds. Forty C.F.R. § 68.130 states that pentane is a regulated substance because it is a volatile flammable liquid. Pentane has a high vapor pressure even at room temperature.

16. Inventory records sent to EPA on February 9, 2009, revealed that Pharmco stored pentane in amounts above 10,000 pounds for approximately six days in 2005 (from November 25, 2005 through December 2, 2005); approximately 29 days in 2006 (on April 28, 2006, and from November 22, 2006 through December 31, 2006); and 16 days in 2007 (on January 2, 2007, from September 20, 2007 through October 3, 2007, and from October 11, 2007 through October 15, 2007). Also, Pharmco's Tier II form for 2008 revealed that on at least one occasion in 2008, Pharmco stored pentane over the threshold amount.

17. Pharmco's Tier II forms indicate that the pentane was stored in the Facility's warehouse, which warehouse also contained other chemicals that were flammable or could release toxic gases.

18. During 2005, 2006, 2007, and 2008, Pharmco stored more than the threshold amount of regulated pentane in a "covered process," as that term is defined at 40 C.F.R. § 68.3.

19. As the operator of a stationary source that had more than the threshold amount of a regulated substance in a covered process, Pharmco was subject to Part 68. In particular, Pharmco's storage of pentane was subject to the requirements of Program 2, in accordance with the requirements found in 40 C.F.R.§ 68.10(a)-(d). The covered process was subject to Program

2 because (1) the distance to a toxic or flammable endpoint for a worst case release of pentane was more than the distance to a public receptor, making the process ineligible for Program 1, and (2) the process was not eligible for Program 3 because the pentane storage was not subject to OSHA's process safety management standard, and the process was not within one of the listed NAICs codes.

VIOLATION

FAILURE TO SUBMIT A RISK MANAGEMENT PLAN

20. Allegations numbered 11 to 19 are hereby incorporated by reference.

21. Pursuant to 40 C.F.R. §§ 68.10(a), 68.12(a), and 68.150, an owner or operator of a stationary source subject to Part 68 must submit an RMP no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process. Forty C.F.R. §§ 68.150-68.185 specify the required elements of the RMP. The RMP for a Program 2 process documents compliance with the elements of a Program 2 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. §§ 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (hazard assessment to determine off-site consequences of a release); 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

22. By failing to submit a RMP for pentane before storing the chemical in the Facility warehouse in amounts that exceeded the regulatory threshold, Pharmco violated 40 C.F.R. §§ 68.10(a) and 68.12(a), and Section 112(r)(7)(e) of the Act, 42 U.S.C. § 7412(r)(7)(e).

ADMINISTRATIVE ORDER

23. **As soon as possible, but within no later than 30 days of the effective date of this order**, Pharmco shall certify that it is currently in compliance with 40 C.F.R. § 68.10(a), 68.12(a), and 68.150. Pharmco shall submit such certification to:

Len Wallace
Environmental Scientist, OES
EPA Region 1
Mailcode: OES05-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Catherine Smith, Esq.
Senior Enforcement Counsel, OES
EPA Region 1
Mailcode OES04-4
5 Post Office Square, Suite 100
Boston, MA 02109-3912.

REPORTING REQUIREMENT

24. Pursuant to Section 114(a)(1) of the CAA, Pharmco shall submit the following information to the EPA staff listed in paragraph 23 within (30) days of receipt of this NOV, AO, and RR:

a. From January 1, 2008 to the present, indicate whether Pharmco had on site any of the substances listed under 40 CFR § 68.130 (including but not limited to pentane) in excess of the RMP threshold amounts. If yes, list the substances; the days on which they were present; the amount in which they were present; and where at the Facility such substances were stored and/or processed.

b. Please state whether, from January 1, 2005 through the present, Pharmco has had in place any of the elements of a Program 2 RMP program listed below. Provide a separate response for each numbered subparagraph. If Pharmco answers in the affirmative to any of the subparagraphs, provide all substantiating documentation,

including, but not limited to the date upon which Pharmco put the Program 2 element into place.

i. Worst-case release scenario [See 40 C.F.R. §§ 68.12(b) and (c); and 68.25]

ii. Five-year accident history [See 40 C.F.R. §§ 68.12(b) and (c); and 68.42]

iii. Coordination of response actions with local emergency planning and response agencies [See 40 C.F.R. §§ 68.12(b) and (c)]

iv. Development of a system to manage RMP compliance [See 40 C.F.R. §68.15]

v. Conduct of a hazard assessment, including the following elements: worst-case release scenario analysis; five-year accident history; alternative release scenario analysis; offsite impacts on population and environment; and documentation of analyses, methodology, and data [See 40 C.F.R. Part 68, Subpart B]

vi. Compilation and maintenance of safety information related to the regulated substances, processes and equipment [See 40 C.F.R. § 68.48]

vii. Hazard review, including identification of the hazards associated with the process and substance; identification of opportunities for equipment malfunctions or human errors; identification of safeguards

used or needed to control the hazards or prevent equipment malfunction or human error; and identification of steps used or needed to detect or monitor releases [See 40 C.F.R. § 68.50]

viii. Preparation of written operating procedures that provide clear instructions for safely conducting activities associated with each covered process consistent with the safety information for that process [See 40 C.F.R. § 68.52]

ix. Training of employees in operating procedures [See 40 C.F.R. § 68.54]

x. Maintenance of equipment, including procedures to ensure integrity of process equipment; inspect such equipment; and train employees how to use the equipment [See 40 C.F.R. § 68.56]

xi. Compliance audits [See 40 C.F.R. § 68.58]

xii. Written investigation following incidents that did or could reasonably have resulted in a catastrophic release, including analysis of the factors that contributed to the incident and implementation of follow-up recommendations [See 40 C.F.R. § 68.60]

xiii. Development and implementation of an emergency response program for responding to any releases [See 40 C.F.R. Part 68, Subpart E]

xiv. Written RMP containing the information specified in 40 C.F.R. Part 68, Subpart G.

c. Provide EPA with an estimate of the cost savings realized, if any, by failing to comply with the Program 2 RMP requirements for pentane from January 1, 2005 to the present. If Pharmco put in place any elements of a Program 2 RMP for pentane, provide EPA with the dates when any RMP expenditures took place and the actual costs of complying with the Program 2 requirements, including, but not limited to completion of a RMP.

ENFORCEMENT

25. At any time after the issuance of this AO, EPA may take any or all of the following actions: issue a further order requiring compliance with the Act; issue an administrative penalty order for up to $37,500 per day for each violation; or bring a civil or criminal action seeking an injunction and penalties. See Sections 113(a), (b), (c), and (d) of the Act, 42 U.S.C. §§ 7413(a), (b), (c), and (d); 40 C.F.R Part 19; and 73 Fed. Reg. 75340-75346 (December 11, 2008) (Clean Air Act penalties raised from $25,000 to $32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to $37,500 for violations occurring after January 12, 2009). Be advised that Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations which continue following issuance of a notice of violation.

26. Be advised that issuance of this NOV and AO does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these and other violations. This NOV and AO does not resolve Pharmco's liability for past violations of the Act or for any violations that continue from the date of this NOV and AO up to the date of

compliance.

27. Neither EPA nor the United States, by the issuance of this NOV/AO/RR, assumes any liability for any acts or omissions by Pharmco or Pharmco's employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this NOV/AO/RR; nor shall EPA or the United States be held as a party to any contract entered into by Pharmco or Pharmco's employees, agents, contractors, or consultants engaged to carry out the requirements of this NOV/AO/RR.

EFFECTIVE DATE AND APPLICABILITY

28. This NOV/AO/RR shall take effect within immediately. The AO shall apply to Pharmco, its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for Pharmco. This action is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

29. If Pharmco has any questions regarding this NOV/AO/RR, please contact Len Wallace at (617) 918-1835, or have your legal counsel contact Catherine Smith, Senior Enforcement Counsel, at (617) 918-1777. Pharmco may request an opportunity to confer with EPA within seven days of issuance of this NOV/AO/RR by contacting Len Wallace or Catherine Smith at the phone numbers listed above.

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I – New England

07/01/10
Date